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October 29, 2020

VIA ECF

Hon. Brian M. Cogan
U.S. Dist. Court for the Eastern Dist. of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**RE: Strike 3 Holdings, LLC v. John Doe infringer identified as using IP address
108.27.20.218
Dkt. No. 2:20-cv-04467-BMC**

Judge Cogan,

Plaintiff Strike 3 Holdings, LLC (“Plaintiff”) and Defendant, John Doe subscriber assigned IP address 108.27.20.218, (“Defendant”) jointly submit this letter as required by the Court’s September 23, 2020 Scheduling Order, ECF No. 5.

This is a BitTorrent copyright infringement suit. Using proprietary software named VXN Scan (“VXN”), Plaintiff’s investigators have recorded forensic evidence that Defendant’s IP address has downloaded and distributed 47 of Plaintiff’s copyrighted movies using the BitTorrent protocol. Plaintiff relied upon IP address geolocation technology to determine that Defendant’s IP address is located in Great Neck, NY, within this Court’s jurisdiction. *See Malibu Media, LLC v. Doe*, No. 14-4808, 2016 WL 4574677, at *3–4 (E.D.N.Y. Sept. 1, 2016) (discussing reliance on geolocation technology to establish *prima facie* case of personal jurisdiction). Based on this evidence, Plaintiff filed suit against Defendant for direct copyright infringement, pursuant to 17 U.S.C. §§ 106 and 501. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338 (jurisdiction over copyright actions).

At this time, defense counsel has not disclosed Defendant’s identity to Plaintiff. Since BitTorrent is anonymous, revealing only the IP address used to commit the infringement, Plaintiff sought (and was granted) leave to serve a subpoena on Defendant’s Internet Service Provider (“ISP”) to learn his or her name and address. ECF No. 7. In light of the time-restrictions placed on that subpoena by the Court’s order authorizing that subpoena, *see id.*, Plaintiff does not expect to receive a response to that subpoena until November 27, 2020 (assuming no objection is filed), after which Plaintiff must investigate whether it still has an adequate basis to further identify the defendant as the infringer and, if so, to amend its pleadings and serve Defendant with process.

Plaintiff contemplates that the parties may seek the entry of a confidentiality order regarding discovery materials in this matter, and unless discovery disputes arises, Plaintiff contemplates that it will file a motion for summary judgment at the conclusion of fact and expert discovery.

The enclosed Case Management Plan includes a schedule to complete non-expert discovery within the 90-day time period for a “non-complex” case, but beginning not from the Initial Status Conference (11/5) but from January 1, 2021, a date 35 days after Plaintiff anticipates receiving the subpoena response, to afford Plaintiff 14 days to amend its pleadings and effect service of process and 21 days for Defendant to respond to the Complaint. Fed. R. Civ. P. 12(a)(1)(A)(i).

Finally, the Plaintiff notes that the enclosed Case Management Plan does not account for expert discovery, which Plaintiff believes will be important in this matter to explain the computer forensics evidence that will prove Defendant infringed on Plaintiff’s copyrighted works by downloading and distributing them using the BitTorrent protocol.

We look forward to discussing this matter with Your Honor further at the Initial Status Conference on November 5, 2020. Thank you for your attention to this matter.

Respectfully submitted,

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Encl.